



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 21 2007

OFFICE OF
AIR AND RADIATION

Ms. Catherine Witherspoon
Executive Officer
California Air Resources Board
1001 I Street
Sacramento, California 95812

Dear Ms. Witherspoon:

I am writing in response to, and to provide an update regarding, the December 21, 2005, request from the California Air Resources Board (CARB) that the Environmental Protection Agency (EPA) grant the State of California a waiver of preemption, under Section 209(b) of the Clean Air Act, for CARB's greenhouse gas emission regulations for certain new motor vehicles beginning with the 2009 model year.

The timing of EPA's consideration of CARB's waiver request is related to the Massachusetts v. EPA case, No. 05-1120, currently pending before the United States Supreme Court. That case involves EPA's determination that it does not have authority under the Clean Air Act to regulate greenhouse gas emissions from new motor vehicles in order to address global climate change, as well as EPA's assertion that, even if it did have such authority, it properly exercised its discretion at that time in deciding not to so regulate. EPA believes that the decision and opinion from the Supreme Court in the Massachusetts case, anticipated by the close of the Court's current term in June 2007, could be directly relevant to issues EPA must address in the context of CARB's waiver request. Because of this, EPA intends to proceed with the waiver request after the Supreme Court has issued its decision in Massachusetts v. EPA.

We note that related issues are currently pending in other proceedings. For example, the U.S. District Court for the Eastern District of California, in Central Valley Chrysler-Jeep v. Witherspoon, recently stayed its proceedings pending the announcement of the Supreme Court's decision in Massachusetts v. EPA because of the relationship of the enforcement of California's greenhouse gas regulations to the issues pending before the Supreme Court.¹ In addition, the Department of Transportation, National Highway Traffic Safety Administration's proposed regulation that, among other things, adopts a CAFE standard for light trucks manufactured in model years 2008-2011 is currently before the U.S. Court of Appeals for the Ninth Circuit. See

¹ Central Valley Chrysler-Jeep v. Witherspoon, No. 04-6663, Memorandum Opinion and Order on Defendants' Motion for Summary Judgment on the Issue of Ripeness and/or Mootness and Order for Stay of Further Proceedings, slip op. at 5, 19, 22 (Jan. 16, 2007 E.D. Cal.).

Center for Biological Diversity v. National Hwy. Traffic Safety Admin., Nos. 06-71891, et al.
(addressing challenge to Average Fuel Economy Standards for Light Trucks Model Years 2008-2011, 71 Fed. Reg. 17566, 17679 (April 6, 2006)).²

EPA has placed California's request and related materials into its official electronic docket, which can be accessed at regulations.gov with the reference number EPA-HQ-OAR-2006-0173.

If you have any questions, please feel free to contact me, or your staff can contact David Dickinson, in EPA's Office of Transportation and Air Quality, at (202) 343-9256.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. L. Wehrum', with a long horizontal flourish extending to the right.

William L. Wehrum
Acting Assistant Administrator

² See also Green Mountain Chrysler-Plymouth-Dodge, et al. v. Torti, et al., No. 2:05-CV-302 (D. Vt.) (challenging, as being in conflict with and preempted by federal law, the Vermont Low Emissions Vehicle Program that proposes to regulate, among other things, carbon dioxide emissions from automobiles); Association of Internat'l Auto. Mfrs., et al. v. Sullivan, et al., No. 06-69T (D. R.I.) (similar case, but challenging Rhode Island regulations proposing to control emissions of carbon dioxide, methane, nitrous oxide and hydrofluorocarbons).